IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPLICATION NO. 5147 OF 2004

Mrs. Vibhavari N. Borkar ...Applicant.

V/s

Suresh Maikulal Gupta
and Others. ...Respondents.

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Mr. S.V. Marwadi i/b Mr. Suresh M. Jain for the applicant.

Mr. S.R. Shinde, APP for the State.

CORAM: V.M.KANADE,J.
DATE: 16th March, 2005

P.C.:

1. Applicant is challenging the issuance of process by the Metropolitan Magistrate, 43rd Court, Borivali, Mumbai on a complaint filed by respondent No.1 under section 138 read with section 141 of the Negotiable Instrument Act.

2. It is submitted by the learned Counsel appearing on behalf of the applicant that the process was issued without proper and judicious application of mind and without considering the role of each and every accused. It is submitted that the applicant was not in charge of and responsible for day-to-day conduct of the business of the Company. It is further submitted that complaint has been filed by the Director without there being any authority or resolution being passed

by the Company in support of the filing of the complaint by Suresh Maikulal Gupta. It is further submitted that there is misjoinder of cause of action as more than three cheques have been clubbed together in one complaint.

3. I have perused the complaint. The accused No.1 is a Private Limited Company in which there are only two Directors viz. N.V. Borkar and the present applicant. Applicant being one of the Directors of a Private Limited Company, was clearly in charge of the affairs of the Company. Applicant in the application has made a bald statement that Shri Borkar - accused No.1 is the husband of the applicant, who has expired and that she is a Director of the Company only for the name sake and she did not know any thing about the affairs of the Company. It is not mentioned in the application as to when the accused No.1 expired. In the complaint, it is clearly stated that both the accused are Directors of the Private Limited Company. Thus, in my view, there are sufficient averments made in the complaint to indicate that the applicant was in charge of and responsible for the affairs of the Company. It is open for the applicant to lead evidence in the Trial court and prove that she was not in charge and responsible for the affairs of the

Company and the Trial Court after perusal of the evidence can decide the said issue. Thus, there is no reason to interfere with the order of issuance of process. All questions raised in this application are kept open. Criminal Application is dismissed.

V.M. KANADE, J.